vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3898 OF 2007

Maharashtra State Road Transport Corporation ... Petitioner

V/s.

Dattatraya Bagwat Varade ... Respondent

Mr.G.S. Hegde for Petitioner
Mr.H.D. Buch with S.K. More for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 22, 2007**

P.C.:

. The petitioner has challenged the orders of the Labour Court and the Industrial Court in Complaint (ULP) No.147 of 2001 and Revision application (ULP) No.33 of 2005 respectively. The services of Respondent No.1, a driver, were terminated since he was found to be medically unfit. The respondent had refracted vision which was an impediment for him in discharging his duty as a Driver, efficiently. The Labour Court has held that the Petitioner committed an unfair labour practice by discharging Respondent No.1 from services. The Labour Court directed the petitioners to absorb the respondent in service by providing him some other suitable employment, with continuity of service and full backwages. The Labour Court relied on two circulars viz., ST/EST/498-E-9407 date 10.9.1975 and 2)

ST/EST/408-E-8347 dated 7.10.1981. The Labour Court has observed thus:

> 5. ... Both these decision of the head office of the respondent are intended for providing employment to drivers who are declared unfit by competent medical authority. As per letter No.ST/EST/418/E-9407 dated 10-9-75 the Divisional Controller (Administration) S.T. Bombay, address to all Divisional Controllers it is expressly mentioned that in its meeting held on 19th and 21st August 1975 the Corporation considered the proposal of the Administration to provide employment to drivers who are declared unfit by the competent medical Authority. Para 1(A) (II) provides that such an employer may be absorbed in any other category suitable to his qualification, age etc. without any loss of pay and brake in service, if any, be condoned as in X(I) above (rest of the provisions not being relevant to the case are not reproduced) It Para 2 of this letter the unit heads were requested to examined all cases to be decided under this authority of the above directive to their division. It is authority mentioned that since many of the drivers already discontinued from MSRTC service may not be readily available. So special efforts will have to be made to communicate the decision of the corporation to inform them to decide which one of the option they should choose subject to availability of the vacancy and other consideration. ..." (Emphasis added).

2. Thus, it is the duty of the Corporation to provide employment to drivers who are declared unfit by the competent medical authority rather than driving them to Court to secure some alternate employment with the petitioners. The Industrial Court has dismissed the revision application.

3. In the present case, the respondent driver was

directed by an order of this Court dated 23.7.2007 to subject himself to a medical test conducted by the petitioners. The respondent has undergone this test and it has been found that his medical condition does not disqualify him for employment in the office of the MSRTC as a ST conductor. In such circumstances, there is no need to interfere with the findings of the Labour Court and the Industrial Court.

4. Mr.Hegde, appearing for the petitioner, submits that the petitioner has decided to give work to the respondent only by way of a concession and, therefore, backwages are not payable to him. This submission cannot be accepted as the aforesaid two circulars make it amply clear that it was the duty of the petitioner to implement these circulars by providing work to a driver who is found medically fit, rather than driving him to the Court.

5. Petition rejected.